RESPONDENTS' APPENDIX

Statutes and Rules Involved

Section 4 of the Clayton Act, 15 U.S.C. § 15. Suits by persons injured; amount of recovery

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Rule 23. Class Actions.

(a) PREREQUISITES TO CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular

issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Statutes and Rules Involved

Rule 23.1. Derivative Actions by Shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Ex.

Complaint

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 134368

JURY TRIAL DEMANDED

JOSEPH B. KAUFFMAN
27 South Oakland Avenue
Ventnor City, New Jersey

On behalf of himself and all other shareholders of defendant externally managed mutual funds and all other externally managed mutual funds affiliated therewith or related thereto and, derivatively, on behalf of defendant externally managed mutual funds and all other externally managed mutual funds affiliated therewith or related thereto

Plaintiff,

v.

THE DREYFUS FUND, INC., INVESTORS MUTUAL, INC., INVESTORS STOCK FUND, INC., INVESTORS VARIABLE PAYMENT FUND, INC., WELLINGTON FUND, INC., WINDSOR FUND, INC., AFFILIATED FUND, INC., UNITED FUNDS, INC., UNITED ACCUMULATIVE FUND, UNITED INCOME FUND, UNITED SCIENCE FUND, FUNDAMENTAL INVESTORS, INC., DIVERSIFIED GROWTH STOCK FUND, INC., DIVERSIFIED INVESTMENT FUND, INC., FIDELITY TREND FUND, INC., FIDELITY FUND, INC., PURITAN FUND, INC., FIDELITY CAPITAL FUND, INC., DOW THEORY INVESTMENT FUND, INC., THE INVESTMENT COMPANY OF AMERICA, AMERICAN MUTUAL FUND, INC., WASHINGTON MUTUAL

Investors Fund, Inc., Hamilton Funds, Inc., Technology Fund, Inc., Chemical Fund, Inc., The George Putnam Fund of Boston, The Putnam Growth Fund, Putnam Investors Fund, Inc., Manhattan Fund, Inc., Dividend Shares, Inc., Bullock Fund, Ltd., State Street Investment Corp., Financial Street Fund, Inc., Boston Fund, Inc., Financial Industrial Fund, Inc., National Securities Series, National Securities Stock Series, National Securities Growth Series, Keystone Custodian Funds, Inc., Keystone Lower-Priced Common Stock Fund (S-4), Keystone Growth Fund (K-2), Keystone Growth Common Stock Fund (S-3), Keystone Income Common Stock Fund (S-2), Keystone Income Fund (K-1), Axe-Houghton Fund B, Inc., Group Securities, Inc., Eaton & Howard Stock Fund, Eaton & Howard Balanced Fund, The One William Street Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., Rowe Price New Horizons Fund, Inc., Channing Shares, Inc., Channing Growth Fund, Channing Balanced Fund, The Colonial Fund, Inc., Selected American Shares, Inc., Commonwealth Investment Co., Massachusetts Fund, Loomis-Sayles Mutual Fund, Inc., Scudder, Stevens & Clark Common Stock Fund, Inc., Scudder, Stevens & Clark Balanced Fund, Inc., Stein Roe & Farnham Balanced Fund, Inc., The Value Line Special Situations Fund, Inc., Pioneer Fund, Inc., Energy Fund, Inc.,

Individually and representatively

The Dreyfus Corp., Investors Diversified Services, Inc., Wellington Management Co., Lord, Abbett & Co., Wardell & Reed, Inc., Anchor Corp., Fidelity Management & Research Co., Capital Research & Management Co., Johnston, Lemon & Co., Hamilton Management Corp., Supervised Investors Services, Inc., F. Eberstadt & Co., Putnam

MANAGEMENT CO., INC., TSAI MANAGEMENT & RESEARCH CORP., CALVIN BULLOCK, LTD., STATE STREET RESEARCH & MANAGEMENT CO., BOSTON MANAGEMENT & RESEARCH CO., INC., VANCE, SANDERS & CO., INC., FINANCIAL PROGRAMS, INC., NATIONAL SECURITIES & RESEARCH CORP., KEYSTONE CUSTODIAN FUNDS, INC., E. W. AXE & CO., INC., DISTRIBUTORS GROUP, INC., EATON & HOWARD, INC., LEHMAN BROTHERS, T. ROWE PRICE & ASSOCIATES, INC., ROWE PRICE MANAGEMENT CO., INC., VAN STRUM & TOWNE, INC., COLONIAL MANAGEMENT ASSOCIATES, INC., SECURITY SUPERVISORS, FUND AMERICAN INVESTMENT MANAGEMENT CO., THE MASSACHUSETTS CO., INC., LOOMIS-SAYLES & CO., INC., SCUDDER, STEVENS & CLARK, STEIN ROE & FARNHAM, ARNOLD BERNHARD & CO., INC., PIONEER MANAGEMENT CORP., RALPH E. SAMUEL & CO.,

Individually and representatively

HOWARD M. STEIN, STUART F. SHADOWAY, WALTER L. MORGAN, ROBERT S. DRISCOLL, JOE JACK MERRIMAN, JOHN R. HAIRE, EDWARD C. JOHNSON, II, JONATHAN B. LOVELACE, JAMES H. LEMON, ANTHONY R. TYRONE, JOCIN HAWKINSON, FRANCIS S. WILLIAMS, CHARLES M. WIESLY, GERALD TSAI, JR., HUGH BULLOCK, PAUL C. CABOT, HENRY T. VANCE, THOMAS J. HERBERT, PHILIP C. SMITH, WILFRID GOSSETT, LOUIS K. HYDE, JR., HERBERT R. ANDERSON, CHARLES F. EATON, JR., ALLAN B. HUNTER, CHARLES W. SHAEFFER, T. ROWE PRICE, THOMAS A. MARTIN, JAMES H. OSS, EDWARD P. RUBIN, FRED H. MERRILL, HENRY R. GUILD, MAURICE T. FREEMAN, RONALD T. LYMAN, JR., HARRY R. HAUBY, JR., ARNOLD BERNHARD, PHILIP L. CARRET, DONALD C. SAMUEL,

Individually and representatively

INVESTMENT COMPANY INSTITUTE,

Defendants.

COMPLAINT

Count One

1. This action is instituted under Section 16 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 737 (15 USC § 26) for equitable relief and under Section 4 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 731 (15 USC § 15) to recover treble damages and the costs of suit, including reasonable attorneys' fees, against the defendants for the injuries sustained by plaintiff and members of the class represented by him and, derivatively, by defendant externally managed mutual funds and members of the class represented by them by reason of defendants' violations as hereinafter alleged of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 USC §§ 1 and 2), commonly known as the Sherman Act.

A. *Plaintiff and Plaintiff Classes*

2. Plaintiff Joseph B. Kauffmann ("Kauffmann") is an individual with his residence at 27 South Oakland Avenue, Ventnor City, New Jersey. Kauffmann has been a shareholder of the following externally managed, open-end investment companies ("externally managed mutual funds"): defendant Fidelity Trend Fund, Inc. since November 22, 1965; defendant The Putnam Growth Fund since November 22, 1965; defendant The Dreyfus Fund Inc. since November 24, 1965; and defendant Manhattan Fund, Inc. since February 24, 1966. At present, Kauffmann owns 413 shares of Fidelity Trend Fund, Inc. common stock, 476 shares of

Complaint

The Putnam Growth Fund common stock, 626 shares of The Dreyfus Fund Inc. common stock and 51 shares of Manhattan Fund, Inc., common stock.

3. Plaintiff is representative of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and brings this action on behalf of himself and the entire class.

4. Plaintiff also brings this action derivatively on behalf of defendant externally managed mutual funds and, in his capacity as representative, derivatively on behalf of all other externally managed mutual funds affiliated therewith or related thereto.

5. (a) The representative class consists of all shareholders of the common stock of defendant externally managed mutual funds and all other shareholders of externally managed mutual funds affiliated therewith or related thereto.

(b) The derivative class consists of defendant externally managed mutual funds and all other externally managed mutual funds affiliated therewith or related thereto.

6. Each class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law and fact common to each class. The claims of the representative and derivative plaintiff are typical of the claims of each class and plaintiff will fairly and adequately protect the interests of each class.

7. The prosecution of separate actions by individual members of each class would create the risk of:

(a) inconsistent or varying adjudications in different jurisdictions with respect to individual members of each class which would establish incompatible standards of conduct for the parties opposing each class; and

(b) adjudications with respect to individual members of each class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

8. The questions of law and fact common to the members of each class predominate over any questions affecting only individual members and each class action is superior to other available methods for the fair and efficient adjudication of the controversy.

9. The derivative action is not a collusive one to confer jurisdiction on a Court of the United States which it would not have otherwise.

10. Demand by plaintiff that defendant externally managed mutual funds or any other externally managed mutual funds affiliated therewith or related thereto bring this action would have been futile and, therefore, was not made.

B. *Defendants and Defendant Classes*

11. (a) The following defendants are externally managed mutual funds (corporations unless otherwise in-

dicated), each of which is sued individually, as a co-conspirator, as a member of defendant Investment Company Institute, as an externally managed mutual fund and as a representative on behalf of all other externally managed mutual funds affiliated therewith or related thereto with their principal places of business, as indicated:

THE DREYFUS FUND, INC.
2 Broadway
New York, New York

INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS VARIABLE PAYMENT FUND, INC.
1000 Roanoke Building
Minneapolis, Minnesota

WELLINGTON FUND, INC.
WINDSOR FUND, INC.
3001 Philadelphia Pike
Claymont, Delaware

AFFILIATED FUND, INC.
63 Wall St.
New York, New York

UNITED FUNDS, INC., a corporation also d/b/a
UNITED ACCUMULATED FUND
UNITED INCOME FUND
UNITED SCIENCE FUND
20 West 9th St.
Kansas City, Missouri

Fundamental Investors, Inc.
Diversified Growth Stock Fund, Inc.
Diversified Investment Fund, Inc.
Westminster At Parker
Elizabeth, New Jersey

Fidelity Trend Fund, Inc.
Fidelity Fund, Inc.
Puritan Fund, Inc.
Fidelity Capital Fund, Inc.
Dow Theory Investment Fund, Inc.
35 Congress St.
Boston, Massachusetts

The Investment Company of America
American Mutual Fund, Inc.
900 Wilshire Blvd.
Los Angeles, California

Washington Mutual Investors Fund, Inc.
Southern Building
Washington, D. C.

Hamilton Funds, Inc.
777 Grant St.
Denver, Colorado

Technology Fund, Inc.
120 South LaSalle St.
Chicago, Illinois

Chemical Fund, Inc.
65 Broadway
New York, New York

The George Putnam Fund of Boston, a trust
The Putnam Growth Fund, a trust
Putnam Investors Fund, Inc.
265 Franklin St.
Boston, Massachusetts

Manhattan Fund, Inc.
245 Park Ave.
New York, New York

Dividend Shares, Inc.
Bullock Fund, Ltd.
One Wall St.
New York, New York

State Street Investment Corp.
Federal Street Fund, Inc.
225 Franklin St.
Boston, Massachusetts

Boston Fund, Inc.
111 Devonshire St.
Boston, Massachusetts

Financial Industrial Fund, Inc.
950 Broadway
Denver, Colorado

National Securities Series, a trust also d/b/a
National Securities Stock Series
National Securities Growth Series
120 Broadway
New York, New York

KEYSTONE CUSTODIAN FUNDS, INC., a corporation
also d/b/a
KEYSTONE LOWER-PRICED COMMON STOCK FUND (S-4), a trust
KEYSTONE GROWTH FUND (K-2), a trust
KEYSTONE GROWTH COMMON STOCK FUND (S-3), a trust
KEYSTONE INCOME COMMON STOCK FUND (S-2), a trust
KEYSTONE INCOME FUND (K-1), a trust
50 Congress St.
Boston, Massachusetts

AXE-HOUGHTON FUND B, INC.
400 Benedict Ave.
Tarrytown, New York

GROUP SECURITIES, INC.
One Exchange Place
Jersey City, New Jersey

EATON & HOWARD STOCK FUND, a trust
EATON & HOWARD BALANCED FUND, a trust
24 Federal St.
Boston, Massachusetts

THE ONE WILLIAM STREET FUND, INC.
One William St.
New York, New York

T. ROWE PRICE GROWTH STOCK FUND, INC.
ROWE PRICE NEW HORIZONS FUND, INC.
One Charles Center
Baltimore, Maryland

Channing Shares, Inc., a corporation also d/b/a
Channing Growth Fund
Channing Balanced Fund
85 Broad St.
New York, New York

The Colonial Fund, Inc.
75 Federal St.
Boston, Massachusetts

Selected American Shares, Inc.
135 South LaSalle St.
Chicago, Illinois

Commonwealth Investment Co.
650 California St.
San Francisco, California

Massachusetts Fund, a trust
70 Federal St.
Boston, Massachusetts

Loomis-Sayles Mutual Fund, Inc.
225 Franklin St.
Boston, Massachusetts

Scudder, Stevens & Clark Common Stock Fund, Inc.
Scudder, Stevens & Clark Balanced Fund, Inc.
10 Post Office Sq.
Boston, Massachusetts

Stein Roe & Farnham Balanced Fund, Inc.
135 South LaSalle St.
Chicago, Illinois

THE VALUE LINE SPECIAL SITUATIONS FUND, INC.
5 East 44th St.
New York, New York

PIONEER FUND, INC.
60 State St.
Boston, Massachusetts

ENERGY FUND, INC.
55 Broad St.
New York, New York

(b) The following defendants are investment advisers of defendant externally managed mutual funds ("investment advisers") (corporations unless otherwise indicated), each of which is sued individually, as a co-conspirator, as an investment adviser and as a representative on behalf of all other investment advisers affiliated therewith or related thereto, with their principal places of business, as indicated:

THE DREYFUS CORP.
2 Broadway
New York, New York

INVESTORS DIVERSIFIED SERVICES, INC.
Investors Building
Minneapolis, Minnesota

WELLINGTON MANAGEMENT CO.
1630 Locust St.
Philadelphia, Pennsylvania

Loun, Assett & Co., a partnership
63 Wall St.
New York, New York

Waddell & Reed, Inc.
20 West 9th St.
Kansas City, Missouri

Anchor Corp.
Westminster At Parker
Elizabeth, New Jersey

Fidelity Management & Research Co.
35 Congress St.
Boston, Massachusetts

Capital Research & Management Co.
900 Wilshire Blvd.
Los Angeles, California

Johnston, Lemon & Co., a partnership
900 Southern Building
Washington, D. C.

Hamilton Management Corp.
777 Grant St.
Denver, Colorado

Supervised Investors Services, Inc.
120 South LaSalle St.
Chicago, Illinois

F. Eberstadt & Co., a partnership
65 Broadway
New York, New York

PUTNAM MANAGEMENT CO., INC.
265 Franklin St.
Boston, Massachusetts

TRAI MANAGEMENT & RESEARCH CORP.
245 Park Avenue
New York, New York

CALVIN BULLOCK, LTD.
One Wall St.
New York, New York

STATE STREET RESEARCH & MANAGEMENT CO., a partnership
225 Franklin St.
Boston, Massachusetts

BOSTON MANAGEMENT & RESEARCH CO., INC.
111 Devonshire St.
Boston, Massachusetts

VANCE, SANDERS & CO., INC.
111 Devonshire St.
Boston, Massachusetts

FINANCIAL PROGRAMS, INC.
950 Broadway
Denver, Colorado

NATIONAL SECURITIES & RESEARCH CORP.
120 Broadway
New York, New York

KEYSTONE CUSTODIAN FUNDS, INC.
50 Congress St.
Boston, Massachusetts

E. W. Axe & Co., Inc.
400 Benedict Ave.
Tarrytown, New York

Distributors Group, Inc.
60 Pine St.
New York, New York

Eaton & Howard, Inc.
24 Federal St.
Boston, Massachusetts

Lehman Brothers, a partnership
One William St.
New York, New York

T. Rowe Price & Associates, Inc.
Rowe Price Management Co., Inc.
One Charles Center
Baltimore, Maryland

Van Strum & Towne, Inc.
85 Broad St.
New York, New York

Colonial Management Associates, Inc.
75 Federal St.
Boston, Massachusetts

Security Supervisors, a partnership
135 South LaSalle St.
Chicago, Illinois

Fund American Investment Management Co.
650 California St.
San Francisco, California

The Massachusetts Co., Inc.
70 Federal St.
Boston, Massachusetts

Loomis-Sayles & Co., Inc.
225 Franklin St.
Boston, Massachusetts

Scudder, Stevens & Clark, a partnership
10 Post Office Sq.
Boston, Massachusetts

Stein Roe & Farnham, a partnership
135 South LaSalle St.
Chicago, Illinois

Arnold Bernhard & Co., Inc.
5 East 44th St.
New York, New York

Pioneer Management Corp.
60 State St.
Boston, Massachusetts

Ralph E. Samuel & Co., a partnership
55 Broad St.
New York, New York

(c) The following defendants are directors or trustees of defendant externally managed mutual funds and directors or partners of defendant investment advisers ("self-dealing directors"), each of whom is sued individually, as a co-conspirator, as a self-dealing director and as a representative of all other self-dealing directors similarly situated.

Set forth below the names of the self-dealing directors are defendant externally managed mutual funds and defendant investment advisers with which they are affiliated.

HOWARD M. STEIN
THE DREYFUS FUND, INC.
THE DREYFUS CORP.

STUART F. SHILOWAY
INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS VARIABLE PAYMENT FUND, INC.
INVESTORS DIVERSIFIED SERVICES, INC.

WALTER L. MORGAN
WELLINGTON FUND, INC.
WINDSOR FUND, INC.
WELLINGTON MANAGEMENT CO.

ROBERT S. DRISCOLL
AFFILIATED FUND, INC.
LORD, ABBETT & CO.

JOE JACK MERRIMAN
UNITED FUNDS, INC.
UNITED ACCUMULATIVE FUND
UNITED INCOME FUND
UNITED SCIENCE FUND
WADDELL & REED, INC.

JOHN R. HAIBE
FUNDAMENTAL INVESTORS, INC.
DIVERSIFIED GROWTH STOCK FUND, INC.
DIVERSIFIED INVESTMENT FUND, INC.
ANCHOR CORP.

Edward C. Johnson, II
Fidelity Trend Fund, Inc.
Fidelity Fund, Inc.
Puritan Fund, Inc.
Fidelity Capital Fund, Inc.
Dow Theory Investment Fund, Inc.
Fidelity Management & Research Co.

Jonathan B. Lovelace
The Investment Company of America
American Mutual Fund, Inc.
Capital Research & Management Co.

James H. Lemon
Washington Mutual Investors Fund, Inc.
Johnston, Lemon & Co.
Capital Research & Management Co.

Anthony R. Tyrone
Hamilton Funds, Inc.
Hamilton Management Corp.

John Hawkinson
Technology Fund, Inc.
Supervised Investors Services, Inc.

Francis S. Williams
Chemical Fund, Inc.
F. Eberstadt & Co.

Charles M. Werly
The George Putnam Fund of Boston
The Putnam Growth Fund
Putnam Investors Fund, Inc.
Putnam Management Co., Inc.

GERALD TSAI, JR.
MANHATTAN FUND, INC.
TSAI MANAGEMENT & RESEARCH CORP.

HUGH BULLOCK
DIVIDEND SHARES, INC.
BULLOCK FUND, LTD.
CALVIN BULLOCK, LTD.

PAUL C. CABOT
STATE STREET INVESTMENT CORP.
FEDERAL STREET FUND
STATE STREET RESEARCH & MANAGEMENT CO.

HENRY T. VANCE
BOSTON FUND, INC.
BOSTON MANAGEMENT & RESEARCH CO., INC.
VANCE, SANDERS & CO., INC.

THOMAS J. HERBERT
FINANCIAL INDUSTRIAL FUND, INC.
FINANCIAL PROGRAMS, INC.

PHILIP C. SMITH
NATIONAL SECURITIES SERIES
NATIONAL SECURITIES STOCK SERIES
NATIONAL SECURITIES GROWTH SERIES
NATIONAL SECURITIES & RESEARCH CORP.

WILFRED GODFREY
KEYSTONE CUSTODIAN FUNDS, INC.
KEYSTONE LOWER-PRICED COMMON STOCK FUND (S-4)
KEYSTONE GROWTH FUND (K-2)
KEYSTONE GROWTH COMMON STOCK FUND (S-3)
KEYSTONE INCOME COMMON STOCK FUND (S-2)
KEYSTONE INCOME FUND (K-1)

LOUIS K. HYDE, JR.
AXE-HOUGHTON FUND B, INC.
E. W. AXE & CO., INC.

HERBERT R. ANDERSON
GROUP SECURITIES, INC.
DISTRIBUTORS GROUP, INC.

CHARLES F. EATON, JR.
EATON & HOWARD STOCK FUND
EATON & HOWARD BALANCED FUND
EATON & HOWARD, INC.

ALLAN B. HUNTER
THE ONE WILLIAM STREET FUND, INC.
LEHMAN BROTHERS

CHARLES W. SHAEFFER
T. ROWE PRICE GROWTH STOCK FUND, INC.
T. ROWE PRICE & ASSOCIATES, INC.

T. ROWE PRICE
ROWE PRICE NEW HORIZONS FUND, INC.
ROWE PRICE MANAGEMENT CO., INC.

THOMAS A. MARTIN
CHANNING SHARES, INC.
CHANNING GROWTH FUND
CHANNING BALANCED FUND
VAN STRUM & TOWNE, INC.

JAMES H. OBR
THE COLONIAL FUND, INC.
COLONIAL MANAGEMENT ASSOCIATES, INC.

EDWARD P. RUBIN
SELECTED AMERICAN SHARES, INC.
SECURITY SUPERVISORS

FRED H. MERRILL
COMMONWEALTH INVESTMENT CO.
FUND AMERICAN INVESTMENT MANAGEMENT CO.

HENRY R. GUILD
MASSACHUSETTS FUND
THE MASSACHUSETTS CO., INC.

MAURICE T. FREEMAN
LOOMIS-SAYLES MUTUAL FUND, INC.
LOOMIS-SAYLES & CO., INC.

RONALD T. LYMAN, JR.
SCUDDER, STEVENS & CLARK COMMON STOCK FUND, INC.
SCUDDER, STEVENS & CLARK BALANCED FUND, INC.
SCUDDER, STEVENS & CLARK

HARRY H. HAGEY, JR.
STEIN ROE & FARNHAM BALANCED FUND, INC.
STEIN ROE & FARNHAM

ARNOLD BERNHARD
THE VALUE LINE SPECIAL SITUATIONS FUND, INC.
ARNOLD BERNHARD & CO., INC.

PHILIP L. CARRET
PIONEER FUND, INC.
PIONEERING MANAGEMENT CORP.

DONALD C. SAMUEL
ENERGY FUND, INC.
RALPH E. SAMUEL & CO.

(d) Defendant Investment Company Institute ("Institute") is an unincorporated association with its principal place of business at 61 Broadway, New York, New York. It is sued individually, as a co-conspirator, and as the trade association representative for defendant externally managed mutual funds and defendant investment advisers.

12. Each of the representative defendants [¶¶ 12(a), (b) and (c) *supra*] is representative of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and this action is brought against each of them and each entire class of which they are representative.

13. (a) The externally managed mutual funds class consists of the defendant externally managed mutual funds and all other externally managed mutual funds affiliated therewith or related thereto.

(b) The investment advisers class consists of the defendant investment advisers and all other investment advisers affiliated therewith or related thereto.

(c) The self-dealing directors class consists of:

(i) the self-dealing directors;

(ii) all other individuals who contemporaneously are directors or trustees of the defendant externally managed mutual funds and directors or partners of defendant investment advisers; and

(iii) all other individuals who contemporaneously are directors or trustees of externally managed mutual funds affiliated with or related to defendant externally managed

mutual funds and directors or partners of investment advisers affiliated with or related to defendant investment advisers.

14. Each class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law and fact common to each class. The defenses of each class of representative defendants will be typical of the defenses of each class and each class of representative defendants will fairly and adequately protect the interests of that class.

15. The prosecution of separate actions against individual members of each class would create the risk of:

(a) inconsistent or varying adjudications in different jurisdictions with respect to individual members of each class; and

(b) adjudications with respect to individual members of each class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

16. The defendants and each of their respective classes have acted or refused to act on grounds generally applicable to plaintiff and the members of his class and, derivatively, to defendant externally managed mutual funds and the members of their class, thereby making appropriate final injunctive relief against defendants and each of their respective classes in favor of plaintiff and the members of his

class as a whole and, derivatively, in favor of the defendant externally managed mutual funds and the members of their class as a whole.

17. The questions of law and fact common to the members of each class predominate over any questions affecting only individual members and each class action is superior to other available methods for a fair and efficient adjudication of the controversy.

18. As used herein, "defendant" includes each of the above-named defendants and any predecessors in interest thereto.

C. *Facts Conferring Jurisdiction on This Court*

19. (a) Each defendant is an inhabitant of or is found in or transacts business in the District of New Jersey.

(b) The claim hereinafter alleged arose in the District of New Jersey.

(c) Jurisdiction is also based on the jurisdiction of this Court obtained under the other Counts of this Complaint.

D. *Facts Constituting the Cause of Action*

20. Each defendant herein is and at all times material to the Complaint has been engaged in the sale, redemption or management of externally managed mutual funds or mutual fund shares in interstate trade and commerce to customers throughout the United States.

21. Beginning at least as early as January 1, 1965, the exact date being unknown to plaintiff, and continuing to the

present as hereinafter alleged, all of the defendants and each of their respective classes engaged in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in the sale, redemption or management of externally managed mutual funds or mutual fund shares in violation of Sections 1 and 2 of the Sherman Act (15 USC §§ 1 and 2).

22. At all times material to the Complaint, directors or trustees of each of defendant externally managed mutual funds have been affiliated with their respective investment advisers within the meaning of the Investment Company Act of 1940, 15 USC §§ 80a-1 *et seq.*

23. At all times material to the Complaint:

(a) the self-dealing and affiliated directors and their respective investment advisers have dominated and controlled their respective externally managed mutual funds and their personnel, policies and boards of directors.

(b) the self-dealing and affiliated directors have dominated and controlled their respective investment advisers and their personnel, policies and boards of directors; and

24. At all times material to the Complaint, the contracts and other forms of agreement between the defendant investment advisers and their respective externally managed mutual funds have not been either the subject or the result of arm's-length bargaining between them.

25. Pursuant to said contracts and other forms of agreement, defendant investment advisers receive for their respective investment advisory and management services a fee calculated solely on the basis of their respective mutual funds' average net assets ("management fees").

26. For fiscal years ended on or nearest to December 31, 1967, the defendant investment advisers received management fees from their defendant externally managed mutual funds, the exact figures being presently unknown to plaintiff, in the aggregate substantially in excess of $90 million dollars. The members of the defendant investment advisers class received additional management fees from externally managed mutual funds affiliated with or related to defendant externally managed mutual funds for the same periods.

27. Said management fees are not related, nor have they been related, either to the services performed by defendant investment advisers or to the performance of their externally managed mutual funds, and are grossly excessive.

28. The combination and conspiracy involved in this action consisted and consist of a continuing agreement, understanding and concert of action, *inter alia*, between and among:

(a) each externally managed mutual fund and its respective investment adviser;

(b) each externally managed mutual fund and its self-dealing directors;

(c) each self-dealing director and his respective investment adviser;

(d) the self-dealing directors;

(e) the members of the externally managed mutual funds class;

(f) the members of the investment advisers class;

(g) the self-dealing directors class;

(h) each member of the externally managed mutual funds class and the Institute;

(i) each member of the investment advisers class and the Institute;

(j) each member of the self-dealing directors class and the Institute; and

(k) the members of the externally managed mutual funds, investment advisers and self-dealing directors classes and the Institute.

29. The substantial terms of the aforesaid combination and conspiracy were and are to:

(a) fix and adopt similar schedules of grossly excessive management fees unrelated to the services performed by investment advisers and the performance of the externally managed mutual funds;

(b) maintain and stabilize prices for the services performed by investment advisers by adherence to said similar schedules of management fees;

(c) refrain from competing for the business of externally managed mutual funds or the business of investment advisers;

(d) refrain from causing externally managed mutual funds from providing for investment advisory or management services internally; and

(e) otherwise to fix prices in, monopolize, and attempt to monopolize, the management market.

30. All of the defendants and each of their respective classes have acquiesced, encouraged, cooperated and assisted in the effectuation and maintenance of the aforesaid combination and conspiracy.

31. Various other corporations, individuals and entities who are neither defendants nor members of defendant classes herein, their identity being presently unknown to plaintiff, participated and are participating as co-conspirators in the aforesaid combination and conspiracy and performed acts in furtherance thereof.

32. By reason of the aforesaid combination and conspiracy, plaintiff and each member of his class and defendant externally managed mutual funds and each member of their class have paid substantially more for investment advisory and management services than they would have paid had the aforesaid combination and conspiracy not existed and will continue to do so unless defendants are enjoined as prayed herein.

33. As a result of the aforesaid combination and conspiracy, plaintiff and each member of his class and defendant externally managed mutual funds and each member of their class have been substantially injured and damaged

by defendants in an amount which is presently undetermined.

WHEREFORE, plaintiff demands:

1. (a) Judgment in his favor and in favor of each member of the class represented by him in threefold the amount of the damages determined to have been sustained, together with the costs of suit, including reasonable attorneys' fees;

(b) Derivatively, judgment in favor of defendant externally managed mutual funds and in favor of each member of the class represented by them in threefold the amount of the damages determined to have been sustained, together with the costs of suit, including reasonable attorneys' fees; and

2. Final injunctive relief enjoining and restraining defendants from continuing to pay or receive grossly excessive management fees or fees calculated solely on the basis of the average net assets of any of their externally managed mutual funds; and

3. Such other and further relief as may be necessary and appropriate.

COUNT TWO

34. This action is instituted under the Act of Congress of August 22, 1940, c. 686, Title I, 54 Stat. 789, as amended (15 USC §§ 80a-1 *et seq.*) ("Investment Company Act of 1940") for equitable relief and to recover damages and the costs of suit, including reasonable attorneys' fees, against the defendants for the injuries sustained by plaintiff and

members of the class represented by him and, derivatively, by defendant externally managed mutual funds and members of the class represented by them by reason of defendants' violations as hereinafter alleged of Sections 1 (15 USC § 80a-1), 10 (15 USC § 80a-10), 15 (15 USC § 80a-15), 17 (15 USC § 80a-17), 36 (15 USC § 80a-35) and 37 (15 USC § 80a-36) of the Investment Company Act of 1940.

E. Parties

35. Paragraphs 2 through 18 of Count One of this Complaint are incorporated herein by reference.

F. Jurisdiction

36. (a) Each defendant is an inhabitant of or is found in or transacts business in the District of New Jersey.

(b) In connection with the acts, combination and conspiracy alleged herein, acts and transactions occurred in the District of New Jersey.

(c) Jurisdiction is also based on the jurisdiction of this Court obtained under the other Counts of this Complaint.

G. The Cause of Action

37. Paragraph 20 of Count One of this Complaint is incorporated herein by reference.

38. Beginning at least as early as January 1, 1965, the exact date being unknown to plaintiff, and continuing to the present as hereinafter alleged, all of the defendants and each of their respective classes unlawfully combined and conspired, and unlawfully acted individually, in con-

nection with the sale, redemption or management of externally managed mutual funds or mutual fund shares in violation of Sections 1, 10, 15, 17, 36 and 37 of the Investment Company Act of 1940.

39. Paragraphs 22 through 31 of Count One of this Complaint are incorporated herein by reference.

40. Pursuant to agreement, brokers who execute portfolio transactions for defendant externally managed mutual funds ("executing brokers") at the direction of their respective investment advisers execute such transactions for less than the commission paid to them, in such cases giving up the balance to brokers ("non-executing brokers") (commonly known as "give-ups").

41. Although management fees are paid to defendant investment advisers for the purpose of providing total (here grossly excessive) compensation for their services on behalf of their respective externally managed mutual funds, the investment advisers obtain additional compensation by allocating portions of executing broker commissions to non-executing brokers who provide such investment advisers with investment advisory and management services either for no charge or at a discount (commonly known as "reciprocals").

42. Except in the cases of defendants Investors Diversified Services, Inc. and Waddell & Reed, Inc.:

(a) None of the "give-ups" or "reciprocals" is used to reduce the management fees of the defendant investment advisers.

(b) None of the "give-ups" or "reciprocals" is returned to the defendant externally managed mutual funds.

43. The practice of "give-ups" and "reciprocals" results in compensation to defendant investment advisers that exceeds the already grossly excessive amounts provided for in the investment advisory and management contracts and other forms of agreement.

44. The practice of "give-ups" and "reciprocals" results, *inter alia*, in compensation to defendant investment advisers that exceeds the compensation permitted by the Investment Company Act of 1940.

45. The payment to and receipt by defendant investment advisers of the management fees, "give-ups" and "reciprocals", and defendants' refusal to cause defendant externally managed mutual funds to provide internal investment advisory or management services has constituted and will continue to constitute:

(a) willful and unlawful conversion by defendants of the assets of defendant externally managed mutual funds and their shareholders to their personal use and benefit in violation of the Investment Company Act of 1940;

(b) gross abuse of trust, gross misconduct, willful misfeasance, bad faith, gross negligence and breach of their fiduciary duties by defendants in violation of the duties imposed upon them, expressly and by neces-

sary implication, by the Investment Company Act of 1940; and

(c) violations of Sections 1, 10, 15, 17, 36 and 37 of the Investment Company Act of 1940.

46. In connection with and in furtherance of the aforesaid combination and conspiracy, as well as individually, defendants, directly and indirectly, by use of the means and instrumentalities of interstate commerce and of the mails, engaged in acts, practices, courses of business and manipulative and deceptive devices and contrivances, all constituting and operating as a fraud and deceit upon plaintiff and each member of his class and upon defendant externally managed mutual funds and each member of their class.

47. In connection with and in furtherance of the aforesaid combination and conspiracy, as well as individually, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce and the mails and facilities of national securities exchanges.

48. By reason of the aforesaid combination and conspiracy as well as the aforesaid individual acts, plaintiff and each member of his class and defendant externally managed mutual funds and each member of their class have paid substantially more for investment advisory and management services than they would have paid had the aforesaid combination and conspiracy not existed and will continue to do so unless defendants are enjoined as prayed herein.

49. As a result of the aforesaid combination and conspiracy as well as the aforesaid individual acts, plaintiff and each member of his class and defendant externally managed mutual funds and each member of their class have been substantially injured and damaged by defendants in an amount which is presently undetermined.

WHEREFORE, plaintiff demands:

1. (a) Judgment in his favor and in favor of each member of the class represented by him in the amount of damages determined to have been sustained, together with the costs of suit, including reasonable attorneys' fees;

(b) Derivatively, judgment in favor of defendant externally managed mutual funds and in favor of each member of the class represented by them in the amount of the damages determined to have been sustained, together with the costs of suit, including reasonable attorneys' fees; and

2. Final injunctive relief enjoining and restraining defendants from continuing to pay or receive "give-ups", "reciprocals" and grossly excessive management fees or fees calculated solely on the basis of the average net assets of any of their externally managed mutual funds; and

3. Such other and further relief as may be necessary and appropriate.

COUNT THREE

50. This action is instituted under:

(a) the Act of Congress of June 6, 1934, c.404, 48 Stat. 881, as amended (15 USC §§ 78a *et seq.*) ("Securi-

ties Exchange Act of 1934") for equitable relief and to recover damages and the costs of suit, including reasonable attorneys' fees, against the defendants for the injuries sustained by plaintiff and the members of the class represented by him and, derivatively, by defendant externally managed mutual funds and members of the class represented by them by reason of defendants' violations as hereinafter alleged, of Section 14(a) (15 USC § 78n) of the Securities Exchange Act of 1934 and Rule 14a-9 (17 CFR § 240.14a-9) adopted thereunder;

(b) the Act of Congress of August 22, 1940, c.686, Title II, 54 Stat. 847, as amended (15 USC §§ 80b-1 *et seq.*) ("Investment Advisers Act of 1940") for equitable relief and to recover damages and the costs of suit, including reasonable attorneys' fees, against the defendants for the injuries sustained by plaintiff and members of the class represented by him and, derivatively, by defendant externally managed mutual funds and members of the class represented by them by reason of defendants' violations as hereinafter alleged of Section 206 (15 USC § 80b-6) of the Investment Advisers Act of 1940; and

(c) the Investment Company Act of 1940 for equitable relief and to recover damages and the costs of suit, including reasonable attorneys' fees, against the defendants for the injuries sustained by plaintiff and members of the class represented by him and, derivatively, by defendant externally managed mutual funds and members of the class represented by them by reason of defendants' violations as hereinafter alleged of

Sections 20 (15 USC § 80a-20) and 34 (15 USC § 80a-33) of the Investment Company Act of 1940.

H. *Parties*

51. Paragraphs 2 through 18 of Count One of this Complaint are incorporated herein by reference.

I. *Jurisdiction*

52. Paragraph 36 of Count Two of this Complaint is incorporated herein by reference.

J. *The Cause of Action*

53. Paragraph 20 of Count One of this Complaint is incorporated herein by reference.

54. Beginning at least as early as January 1, 1965, the exact date being unknown to plaintiff, and continuing to the present as hereinafter alleged, all of the defendants and each of their respective classes unlawfully combined and conspired, and unlawfully acted individually, in connection with the sale, redemption or management of externally managed mutual funds or mutual fund shares in violation of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 adopted thereunder, Section 206 of the Investment Advisers Act of 1940 and Sections 20 and 34 of the Investment Company Act of 1940.

55. Paragraphs 22 through 31 of Count One of this Complaint are incorporated herein by reference.

56. Paragraphs 40 through 47 of Count Two of this Complaint are incorporated herein by reference.

57. In connection with and in furtherance of the aforesaid combination and conspiracy, as well as individually, defendants have participated in the preparation and issuance of proxy statements, and other announcements, releases, reports and statements, which are in violation of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 adopted thereunder, Sections 206 of the Investment Advisers Act of 1940 and Sections 20 and 34 of the Investment Company Act of 1940, in that they make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, *inter alia*, by failing to disclose, or by making false disclosures with respect to, the facts set forth in paragraphs 23, 24, 27-29 and 40-46.

58. Paragraphs 48 and 49 of Count Two of this Complaint are incorporated herein by reference.

WHEREFORE, plaintiff demands:

1(a). Judgment in his favor and in favor of each member of the class represented by him in the amount of the damages determined to have been sustained, together with the costs of suit, including reasonable attorneys' fees;

(b) Derivatively, judgment in favor of defendant externally managed mutual funds and in favor of each member of the class represented by them in the amount of the damages determined to have been sustained, together with the costs of suit, including reasonable attorneys' fees; and

2. Final injunctive relief enjoining and restraining defendants from continuing to pay or receive "give-ups", "reciprocals" and grossly excessive management fees or fees calculated solely on the basis of the average net assets of any of their externally managed mutual funds; and

3. Such other and further relief as may be necessary and appropriate.

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Attorneys for Plaintiff

Notice of Motion by Defendants Investors Diversified Services, Inc., et al. for an Order Dismissing Complaint

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

[SAME TITLE]

To:

JOSEPH B. KAUFFMAN, ESQUIRE
Attorney for Plaintiff
1421 Atlantic Avenue
Atlantic City, New Jersey 08401

PLEASE TAKE NOTICE that the undersigned defendants will, on a date to be fixed by the Court, make motions for the following orders:

(1) Pursuant to Rules 23 and 23.1 of the Federal Rules of Civil Procedure, dismissing the action on the grounds that, on the face of the Complaint, plaintiff does not fairly and adequately represent the interests of the funds or their shareholders;

(2) Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing all claims asserted individually, or representatively on behalf of individual shareholders, on the ground that all of the claims asserted are necessarily derivative in nature;

(3) Pursuant to Rules 12(b)(6), 23 and 23.1 of the Federal Rules of Civil Procedure, dismissing each of

Notice of Motion by Defendants Investors Diversified Services, Inc., et al. for an Order Dismissing Complaint

Counts I, II and III to the extent they seek relief (a) on behalf of funds of which plaintiff is not a shareholder, and (b) on behalf of shareholders of funds of which plaintiff is not a shareholder, on the ground that a party may not maintain an action on behalf of a corporation, or shareholders of a corporation, unless he himself is a shareholder of that corporation;

(4) Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing Counts II and III for failure to state a claim upon which relief can be granted on the ground the conspiracy alleged therein does not constitute a violation of the statutes under which relief is sought;

(5) Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, dismissing the action on the ground that the Court does not have jurisdiction over the persons of defendants;

(6) Pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure, dismissing the action on the ground that it was brought and is pending in the wrong district;

(7) Pursuant to Rule 12(b)(4) of the Federal Rules of Civil Procedure, dismissing the action on the ground of insufficiency of process;

(8) Pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, dismissing the action on the ground of insufficiency of service of process;

Notice of Motion by Defendants Investors Diversified Services, Inc., et al. for an Order Dismissing Complaint

(9) Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Complaint and each count thereof on the ground that it fails to state a claim upon which relief can be granted; and

(10) For such other and further relief as to the Court may be just and proper.

PLEASE TAKE FURTHER NOTICE that the defendants will make, on a date to be fixed by the Court, all other motions described as "Second Group" and "Third Group" in Attachment B to the "Proposed Agenda for Conference of April 18, 1969", heretofore filed herein.

Respectfully submitted,

Dated:
Camden, New Jersey
April 25, 1969.

[SIGNATURES OMITTED]